



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R07-OAR-2018-0828; FRL-9988-09-Region 7]

**Approval of Operating Permits Program; Kansas; Reporting
Emission Data, Emission Fees and Process Information**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Operating Permits Program for the State of Kansas submitted on January 22, 2018. The revised Kansas rules reorganize, clarify, and update the Class I emission fee, application fee, and emissions inventory regulations and ensure that Kansas's Operating Permits Program is adequately funded. Approval of these revisions ensures consistency between the State and federally-approved rules and does not impact air quality.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2018-0828 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Deborah Bredehoft, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7164, or by email at Bredehoft.Deborah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

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I. Written Comments.

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2018-0828, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do

not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Background

EPA granted full approval of the Kansas Operating Permit Program effective February 29, 1996. See 61 FR 2938. Under title 40 Code of Federal Regulations (CFR) 70.9(a) and (b), an approved state's title V operating permits program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and ensure that any fee required under 40 CFR 70.9 is used solely for permit program costs. The fee schedule must result in the collection and retention of

revenues sufficient to cover the permit program implementation and oversight costs.

Kansas Statutes Annotated (KSA) 65-3024 establishes the Air Quality Fee Fund and authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to fix, charge and collect annual emissions fees in amounts necessary to administer the Kansas Air Quality Act. The Secretary also has the authority to periodically increase or decrease such fees, as needed.

Kansas has determined that it has experienced shortfalls in its title V annual emission fee revenues in recent years, due to emission reductions at major facilities. It has determined that fee adjustments are needed to offset the effect of declining revenues and to maintain the Kansas Air Quality program overall. The proposed increases in fees will aid in offsetting the effect of declining revenue and in maintaining the title V fee schedule and the Kansas Air Quality program overall. Projections of program needs for fiscal year 2019 and beyond indicate that resources adequate for effective implementation of the program will not be available without the proposed amendments. The amendments are needed to update the Class I Operating Permit fee schedule to bring in sufficient revenue to adequately administer the Kansas Air Quality Act, specifically to adequately administer the Class I Operating Permit program. Thus, Kansas

has submitted this program revision for review and action by the EPA.

III. What is Being Addressed in this Document?

The EPA is proposing to approve revisions to the Operating Permits Program for the State of Kansas submitted to the EPA on January 22, 2018. Revisions to the program include revoking Kansas Administrative Regulation (K.A.R.) 28-19-202; adding new language to K.A.R. 28-19-517 which parallels language in the revoked K.A.R. 28-19-202; increasing the annual emission fee from \$37 dollars per ton to \$53 dollars per ton; increasing all application fees in K.A.R. 28-19-516; establishing a baseline emission fee; and adding additional clarifications to the Program to address fees, refunds, electronic submittal, and who is required to submit an annual emissions inventory.

IV. Have the Requirements for Approval of a Part 70 Revision Been Met?

The state provided a public comment period for this Operating Permits Program revision from September 7, 2017, to November 15, 2017, and received comments. In response to the comments, Kansas revised the rule prior to submitting to the EPA. The revisions are consistent with applicable EPA requirements in title V of the CAA and 40 CFR part 70.

V. What Action is EPA Taking?

The EPA is proposing to approve revisions to the Kansas Operating Program by approving the State's request to revoke K.A.R. 28-19-202, Annual emissions fees; and to amend K.A.R. 28-19-516, Class I operating permits, application fees; and K.A.R. 28-19-517, Class I operating permits, annual emissions inventory and fees. Approval of these revisions will ensure consistency between the state and federally-approved rules. EPA has determined that these changes will not adversely impact air emissions. Additional information on the the EPA's analysis can be found in the Technical Support Document (TSD) included in this docket.

We are processing this as a proposed action because we are soliciting comments. Final rulemaking will occur after consideration of any comments.

VI. Statutory and Executive Order Reviews

This proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because Title V approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This proposed approval of the revision to Kansas's Title V Operating Permit Program does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated:

December 14, 2018.

James Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 70 as set forth below:

PART 70 -- STATE OPERATING PERMIT PROGRAMS

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Amend appendix A to part 70 by adding new paragraph (g) under Kansas to read as follows:

Appendix A to Part 70 -- Approval Status of State and Local Operating Permits Programs

* * * * *

Kansas.

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(g) The Kansas Department of Health and Environment submitted revisions to Kansas rules K.A.R. 28-19-202, K.A.R. 28-19-516, and K.A.R. 28-19-517, on January 22, 2018. The state effective date is January 5, 2018. This revision is effective **[date 60 days after date of publication of the final rule in the Federal Register]**.

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